

FOR PUBLICATION

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Criminal No. 2007-61
)	
[REDACTED], COURTNEY MATTHIAS,)	
[REDACTED], MONICA BROWNE, JUDY)	
STOWE, and VISHMA SHIVANA PERSAD,)	
)	
Defendants.)	
_____)	

ATTORNEYS:

Jason T. Cohen, AUSA
St. Thomas, U.S.V.I.
For the plaintiff.

Clive C. Rivers, Esq.
St. Thomas, U.S.V.I.
For defendant Courtney Matthias.

Leonard B. Francis, Esq.
St. Thomas, U.S.V.I.
For defendant Monica Browne.

George Hodge, Esq.
St. Thomas, U.S.V.I.
For defendant Judy Stowe.

Jesse A. Gessin, AFPD
St. Thomas, U.S.V.I.
For defendant Vishma Shivana Persad.

ORDER

GÓMEZ, C.J.

Before the Court is the motion of defendants Vishma Shivana

Persad and Judy Stowe (collectively referred to as the "Defendants") to suppress evidence in this matter, which was obtained in St. Martin by St. Martin officials.

The Court held a hearing on the Defendants' motion on May 28, 2008. At that hearing, the government presented the testimony of three Dutch officials involved in the investigation of the Defendants' alleged smuggling of illegal aliens into the United States. Those officials testified that the investigation was executed almost exclusively by Dutch officials in St. Martin, Netherlands Antilles. The Defendants argued at the hearing that evidence obtained during that investigation via wire intercepts as well as statements they made to St. Martin authorities should be suppressed because of alleged Fourth Amendment violations.

"Generally, 'neither our Fourth Amendment nor the judicially created exclusionary rule applies to acts of foreign officials.'" *United States v. La Chapelle*, 869 F.2d 488, 489 (9th Cir. 1989) (quoting *United States v. Maher*, 645 F.2d 780, 782 (9th Cir. 1981) (citations omitted)). This general rule is subject to two exceptions. First, "if the circumstances of the foreign search and seizure are so extreme that they 'shock the [judicial] conscience,' a . . . court in the exercise of its supervisory powers can require exclusion of the evidence." *Id.* (quoting *Birdsell v. United States*, 346 F.2d 775, 782 n.10 (5th Cir.

1965), *cert. denied*, 382 U.S. 963 (1965)).

Second, "'if American law enforcement officials participated in the foreign search, or if the foreign authorities actually conducting the search were acting as agents for their American counterparts, the exclusionary rule can be invoked.'" *United States v. Rose*, 570 F.2d 1358, 1362 (9th Cir. 1978) (quoting *United States v. Morrow*, 537 F.2d 120, 139 (5th Cir. 1976), *cert. denied*, 430 U.S. 956 (1977)). This second exception applies when "United States agents' participation in the investigation is so substantial that the action is a joint venture between United States and foreign officials." *United States v. Peterson*, 812 F.2d 486, 490 (9th Cir. 1987). "If a joint venture is found to have existed, 'the law of the foreign country must be consulted at the outset as part of the determination whether or not the search was reasonable.'" *United States v. Barona*, 56 F.3d 1087, 1091 (9th Cir. 1995) (quoting *Peterson*, 812 F.2d at 490). "If foreign law was not complied with, 'the good faith exception to the exclusionary rule becomes part of the analysis.'" *Id.* (quoting *Peterson*, 812 F.2d at 490). "The evidence shall be excluded only if each step in the analysis is satisfied." *United States v. Ferguson*, 508 F. Supp. 2d 1, 5 (D.D.C. 2007) (citing *Barona*, 56 F.3d at 1093).

For the reasons given on the record at the May 28, 2008,

hearing, the Court sees no basis on which to conclude that the methods used by St. Martin officials to obtain evidence from the Defendants shock the judicial conscience. Also, the Court finds that there was no substantial participation by United States officials in the St. Martin investigation to constitute a joint venture. *See, e.g., Maher*, 645 F.2d at 783 (finding no joint venture in an American arrest based on evidence obtained by a Canadian wiretap because the investigation of the defendant "was initiated and controlled by Canadian police, with only limited support and assistance from American officials on this side of the border"). Consequently, the Court need not address whether Dutch law was complied with or whether the good faith exception to the exclusionary rule applies. The premises considered, it is hereby

ORDERED that the Defendants' motion to suppress is **DENIED**.

S_____
CURTIS V. GÓMEZ
Chief Judge

Copy: Jason T. Cohen, AUSA
Clive C. Rivers, Esq.
Leonard B. Francis, Esq.
George Hodge, Esq.
Jesse A. Gessin, AFD
U.S. Probation Office
U.S. Marshals